EDWARD E. ELLIS

IBLA 86-930 Decided March 10, 1988

Appeal from a decision of the Anchorage, Alaska, District Office, Bureau of Land Management, which declared placer mining claim AA-51140 abandoned and void.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Relocation

   Where it appears that a specifically identified mining claim has been recorded twice with BLM by the same locators, the second time as a relocation, a finding that the claim as relocated is abandoned and void for failure to file evidence of assessment work, on the ground the proof of labor filed with BLM referred only to the serial number assigned to the earlier recordation, will be reversed in the absence of evidence the relocation was adverse to the earlier location rather than an amended location which relates back.

APPEARANCES: Edward E. Ellis, pro se; and Dennis J. Hopewell, Deputy Regional Solicitor, Alaska Region, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Edward E. Ellis appeals a decision of the Anchorage, Alaska, District Office, Bureau of Land Management (BLM), dated March 3, 1986, holding that the Crescent No. 13 placer mining claim, AA-51140, is abandoned and void for failure to record an affidavit of assessment work or notice of intention to hold the claim during 1984 and 1985 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2-1.

In his statement of reasons, appellant refers to the claim as the "Crescent No. 13 AA-51140-AA-41696" and states that at 3:29 p.m. on November 30, 1984, Clyde Holbrook filed the 1984 Annual Labor with BLM, and that at 9:22 a.m. on December 20, 1985, Holbrook filed the 1985 Annual Labor with BLM. Appellant submitted with his statement of reasons a copy of an affidavit of annual labor recorded with BLM in 1984 which identifies the "#13 Crescent Creek" claim and refers to BLM serial numbers AA-41696 and AA-51140. He also submitted a copy of an affidavit of annual labor recorded with BLM in 1985 which identified the "Crescent #13" claim and refers to the same BLM serial numbers. Appellant requests that the BLM decision be vacated and, further, seeks reimbursement of "reasonable costs, fees, lawyer fees & research costs * * * incurred to file this appeal."

In an answer filed with the Board on May 12, 1986, counsel for BLM responded to appellant's statement of reasons. The answer states:

> In disputing the BLM decision, appellant Ellis attaches two documents to his Notice of Appeal. Exhibit 2. One is a copy of an Affidavit of Performance of Annual Labor, attached as page 2 of Exhibit 2, which purports to be a copy of what Ellis filed on November 30, 1984, with the BLM concerning mining claim AA-51140. The second document purports to be a copy of the Affidavit of Performance of Annual Labor for mining claim AA-51140 filed with the Bureau of Land Management on December 20, 1985, and is attached as page 3 of Exhibit 2. These two documents, however, vary from the documents contained in the official BLM case file and official records obtained from the State Recording District in that appellant's documents contain a reference to mining claim AA-51140 and the BLM and State documents contain no such reference.
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> Exhibits 3 and 4 are copies of the 1984 and 1985 Affidavits of Performance of Annual Labor contained in the official BLM case file. A careful review of those two documents shows that there is no reference to claim AA-51140 on either of those two documents.

(Answer at 2).

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982), and the Departmental regulation at 43 CFR 3833.2-1 require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office prior to December 31 of each calendar year following the year in which the claim is located. Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982); 43 CFR 3833.4.

Section 314(a)(2) of FLPMA requires that the copy of the annual filing give "a description of the location of the mining claim sufficient to locate the claimed lands on the ground." 43 U.S.C. § 1744(a)(2) (1982). The regulations promulgated pursuant to this statutory provision state that the evidence of assessment work filed with BLM shall identify "[t]he serial

number assigned to each claim upon filing of the notice, certificate of location in the proper BLM office." 43 CFR 3833.2-2(a)(1). The Board has held that "the proper identification of the claim by name" is an acceptable alternative to BLM's serial number. Philip Brandl, 54 IBLA 343 (1981).

The confusion in this case obviously stems from the fact the Crescent No. 13 mining claim as originally recorded under BLM serial number AA-41696 by the locators thereof, Edward E. Ellis and Jennie L. Ellis, was subsequently relocated and recorded by the same owners under serial number AA-51140. The case record for AA-41696 shows a copy of a notice of location for the "Crescent No. 13" claim was posted on the claim on December 6, 1980, and recorded with BLM on December 29, 1980. The record for AA-51140 bears a copy of a notice of "relocation" for the "Crescent No. 13" claim posted on the claim on May 13, 1983, which was also recorded with BLM (on June 13, 1983) by Edward E. Ellis and Jennie L. Ellis as locators. It appears from the sketch of the location and the description which is a part of each notice of location that the locations embrace the same tract of land.

This Board has previously had occasion to note the widespread confusion between a relocation of a mining claim and an amended location thereof, the former being adverse to the original location while the latter is made in furtherance of an earlier valid location and relates back to the original location. See R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979). While it is clear that the proofs of labor recorded in 1984 and 1985 for the Crescent No. 13 claim did not refer to the BLM serial number of the claim as relocated, 1/ it did identify the claim by name (the name was the same in the original and the subsequent notice of location) and by reference to its serial number under the prior recorded location. In the absence of clear evidence the relocation was adverse to the prior location (which seems unlikely in view of the fact the locators were the same on both occasions), it is error to assume the proof of labor filed under the name of the Crescent No. 13 claim applies only to the earlier location (notwithstanding the sole reference to the serial number for that earlier recorded location). To the extent the "relocation" notice for this claim recorded as AA-51140 is properly treated as an amended notice of location which relates back to the original, it would be improper to treat the latter location as abandoned and void where a proof of labor was timely filed for the Crescent No. 13 claim. Where it appears that a single mining claim has been recorded with BLM on more than one occasion and more than one mining recordation serial number has been assigned to the claim, the proper corrective procedure is to merge the respective files and consider whether, on a combined basis, all of the

1/ The copies of the affidavits of annual labor attached to appellant's statement of reasons for appeal were altered to include the serial number for the claim as relocated, as well as the original serial number for the claim. We assume appellant added this number in an effort to clarify that the two recorded location notices pertain to the same claim. Appellant does not represent that the documents attached to his statement of reasons are true copies of original documents filed with BLM. We note that misrepresentation of fact before a Federal agency would be a violation of the law which might subject a person to criminal sanctions. 18 U.S.C. § 1001 (1982).

requisite filings have been made rather than declaring a claim represented by a specific recordation number to be abandoned and void for failure of a proof of labor to reference that serial number. Michael R. Flynn, 92 IBLA 327 (1986); Ralph C. Memmott, 88 IBLA 377 (1985).

Finally, appellant seeks an award of attorney fees and costs of this appeal for an amount not specified. The basis for the claim is apparently the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (1982 & Supp. IV 1986), which provides under certain circumstances, for payment of attorney fees and expenses in "adversary adjudications" before Federal agencies. 5 U.S.C. § 504(a)(1) (1982 & Supp. IV 1986); 43 CFR 4.601. "Adversary adjudication" refers to cases "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. §§ 504(b)(1)(C) and 554 (1982 & Supp. IV 1986); 43 CFR 4.602(b) and 4.603(a); Bering Straits Native Corp., 83 IBLA 280 (1984). Departmental regulation at 43 CFR 4.603(a) provides that EAJA rules "do not apply where adjudications on the record are not required by statute even though hearings are conducted using procedures comparable to those set forth in 5 U.S.C. 554." Since no hearing is required by statute in order to ascertain whether a mining claim is properly deemed abandoned and void for failure to file the required instruments in accordance with section 314 of FLPMA, 43 U.S.C. § 1744 (1982), and no hearing was held in this case, appellant is entitled to no relief under the EAJA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge